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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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9 RICHARD GARY GARVER,

Case No.: C 14-1445 JSC (PR)

10 Plaintiff,

ORDER OF DISMISSAL

11 v.

12
13 T. MAYES, et al.,

14 Defendants.
15

16
17 **INTRODUCTION**

18 Plaintiff, a California prisoner, filed this pro se civil rights complaint under 42 U.S.C. §
19 1983 against officials at Pelican Bay State Prison.¹ His application to proceed *in forma*
20 *pauperis* is granted in a separate order. For the reasons explained below, the complaint is
21 dismissed.

22 **STANDARD OF REVIEW**

23 Federal courts must engage in a preliminary screening of cases in which prisoners seek
24 redress from a governmental entity or officer or employee of a governmental entity. 28
25 U.S.C. § 1915A(a). The Court must identify cognizable claims or dismiss the complaint, or
26 any portion of the complaint, if the complaint “is frivolous, malicious, or fails to state a claim
27

28 ¹ Plaintiff has consented to the jurisdiction of a United States Magistrate Judge pursuant to 28
U.S.C. § 636(c). (Dkt. No. 5.)

1 upon which relief may be granted,” or “seeks monetary relief from a defendant who is
2 immune from such relief.” *Id.* § 1915A(b). Pro se pleadings must be liberally construed.
3 *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990).

4 DISCUSSION

5 Plaintiff claims that after returning to prison from the hospital, where he was treated for
6 a heart attack, defendants required him to walk in restraints and he fell over and broke his
7 arm. These events took place in 2007. Plaintiff brought these claims in a prior lawsuit in
8 2008, which was dismissed without prejudice because he had not exhausted his administrative
9 remedies. *See Garver v. Mayes, et al.*, No. C 08-1834 WHA (PR) (Dkt. No. 13).

10 Plaintiff's claims are untimely because they arise from events that occurred more than
11 seven years ago. The statute of limitations for a claim under 42 U.S.C. § 1983 is two years.
12 *See Jackson v. Barnes*, 749 F.3d 755, 761 (9th Cir. 2014). Plaintiff is entitled to a maximum
13 of two years of tolling based upon his imprisonment. *See Cal. Code of Civ. Pro. § 352.1(a)*;
14 *see also Martinez v. Gomez*, 137 F.3d 1124, 1125-26 (9th Cir. 1998) (applying California
15 Code of Civil Procedure to determine tolling of section 1983 claim due to imprisonment).
16 Thus, claims that accrued more than four years before they were filed are untimely. A claim
17 accrues when the plaintiff knows or has reason to know of the injury which is the basis of the
18 action. *Two Rivers v. Lewis*, 174 F.3d 987, 991-92 (9th Cir. 1999). Here, plaintiff knew of
19 his injury --- the broken arm -- when it occurred in 2007. Thus, his claims accrued more than
20 four years ago and are untimely. The claims are untimely even if the statute is also tolled for
21 the 17 months during which his first action, No. 08-1834 WHA, was pending.

22 Claims may be dismissed sua sponte under 28 U.S.C. § 1915A where, as here, the
23 statute of limitations defense is complete and obvious from the face of the pleadings. *See*
24 *Franklin v. Murphy*, 745 F.2d 1221, 1228-30 (9th Cir. 1984). Accordingly, Plaintiff's claims
25 will be dismissed with prejudice.

26 CONCLUSION

27 Because Plaintiff's claims are barred by the statute of limitations, the complaint is
28 DISMISSED with prejudice.

The Clerk shall enter judgment and close the file.

IT IS SO ORDERED.

Dated: June 16, 2014



JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE

United States District Court
Northern District of California